

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID MICHAEL HOPKINS,

Defendant-Appellant.

UNPUBLISHED

May 29, 2003

No. 237507

St. Joseph Circuit Court

LC No. 01-010656-FH

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Defendant David Hopkins pleaded guilty to operating a motor vehicle with a suspended license and was then convicted by a jury of operating a vehicle while under the influence of intoxicating liquor/unauthorized blood alcohol level (OUIL/UBAL). The trial court sentenced Hopkins to ninety-three days' imprisonment on the suspended license conviction and, this being a third offense, to a term of 40 to 60 months' imprisonment for OUIL/UBAL. Hopkins appeals as of right. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

While driving with a blood alcohol level of .23 to .27, Hopkins rear-ended a vehicle that was stopped at a traffic light. Hopkins had twenty-one prior convictions, including four for drunk driving and eight felonies. The minimum sentencing range for Hopkins' OUIL/UBAL, third offense conviction was twelve to twenty-four months' imprisonment. In departing from the guidelines, the trial court stated that protection of the public and punishment were substantial and compelling reasons to do so.

II. Standard Of Review

Hopkins argues that the trial court did not articulate why these were substantial and compelling reasons justifying a departure. He further asserts that if the trial court relied on his prior record, it did not articulate why it felt that inadequate weight was given this record by the sentencing guidelines. We review the trial court's determination that its departure is justified by substantial and compelling reasons for an abuse of discretion.¹

¹ *People v Babcock*, 250 Mich App 463, 467; 648 NW2d 221 (2002).

III. Departures From The Guidelines

A court may depart from the legislative sentencing guidelines range if it states on the record substantial and compelling reasons to do so.² A court may not depart based on an offense or offender characteristic already considered in determining the guidelines range unless it finds, based on facts in the record, that the characteristic was given inadequate or disproportionate weight.³

We observe that to the extent the trial court did not clearly articulate on the record why it thought the reasons for departure were substantial and compelling, it provided clarity in the departure form. The trial court's comments indicate that it thought public protection was a compelling reason because Hopkins' history with substance abuse programs had not been positive. There was a realistic concern that Hopkins would again endanger others as he had done in this case if his substance abuse problem was not addressed. Regarding Hopkins' prior record, clearly the guidelines did not take into account the habitual nature of his crimes. This certainly indicates that his record was given inadequate weight. It follows that the punishment suggested by the recommended range would not have been adequate. We find no abuse of discretion in these determinations.⁴

Affirmed.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Pat M. Donofrio

² MCL 769.34(3); *People v Hegwood*, 465 Mich 432, 439; 636 NW2d 127 (2001).

³ MCL 769.34(3); *People v Deline*, 254 Mich App 595, 598; 658 NW2d 164 (2002).

⁴ *People v Fields*, 448 Mich 58, 78; 528 NW2d 176 (1995).